

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 13-21 and 24-33 are pending in the application, with claims 13, 24, 28 and 29 being the independent claims. Claims 22-23 and claims 1-12 have been previously cancelled, without prejudice to or disclaimer of the subject matter therein. Applicant reserves the right to prosecute similar or broader claims, with respect to the cancelled and amended claims, in the future. New claims 30-33 are sought to be added. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Statement of Substance of Interview Pursuant to 37 C.F.R. §1.133 and M.P.E.P. § 713.04

This statement is provided in response to the Interview Summary mailed March 26, 2010. Applicant wishes to thank Examiner Rajiv J. Raj and Examiner Vivek Koppikar for the courtesies extended during the in-person interview with the Applicant's representatives, Jason Eisenberg and Viraj Tipnis, on March 23, 2010. The claim rejections were discussed. In particular, distinguishing features set forth in independent claim 13¹, and using respective language in independent claims 24, 28 and 29 were discussed in view of the applied references. During the Interview, the Examiners tentatively agreed that the applied reference of Greenes *et al.*, "A Hierarchical Data Management Facility For Clinical Record Applications," would most likely be removed in view of the arguments presented during the Interview, and that independent claims 13, 24, 28 and 29 potentially contained allowable subject matter. Also, the Examiner suggested new claim language that they believed would further distinguish the claims

¹ An Interview Summary was mailed March 26, 2010. The Examiner notes claim 1 was discussed. However, Applicant believes this is an inadvertent typographical error as claims 13, 24, 28, and 29 were discussed, and claim 1 was previously cancelled.

from the applied references. Applicant is seeking to enter claims 30-33, which recite the suggested language. However, no final agreement was reached, and the Examiners required a formal written Response.

Rejection Under 35 U.S.C. § 103

Claims 13-21 and 24-29 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 5,823,948 to Ross, Jr. *et al.* ("Ross") in view of U.S. Published Patent Application No. 2002/0082868 A1 to Pories *et al.* ("Pories"), and in further view of Greenes *et al.*, "A Hierarchical Data Management Facility For Clinical Record Applications" ("Greenes"). Applicant respectfully traverses the rejection, and the Response to Arguments section at pages 17-18 of the Non-Final Office Action ("Office Action").

As discussed, and tentatively agreed to, during the Interview, independent claims 13, 24, 28 and 29 recite features that distinguish over the applied references. For example, claim 13 recites:

imparting a concept identifier of a standard code to
each of the standard patient-language cardinal symptoms,
and

classifying each of the mapped patient-language
cardinal symptoms according to whether a concept of the
patient-language cardinal symptom exactly matches or
substantially matches the imparted concept identifier of the
standard code.

Claims 24, 28 and 29 recite similar distinguishing features as claim 13.

1. The Applied References Lack the Claimed "Imparting" and "Classifying"

On page 5 of the Office Action, the Examiner states that Ross and Pories do not disclose at least the above noted distinguishing features. Rather, the Examiner relies on Greenes to teach or suggest these features. Applicant disagrees.

Greenes teaches "text string manipulation features, for locating, extracting, comparing and inserting strings, for checking syntax and for controlling the format of

input and output." Greenes , Section (1). Greenes further suggests "complex hierarchies of data (text or numeric) entirely symbolically in such a form that data may always be referenced through sequence of subscripts indicating the node numbers to access a particular datum." Greenes, Section (3). Greenes states that "an entire data structure may be shared by multiple users in the system simultaneously, and updating or changing of the database may be accomplished without time -sharing conflict." Greenes, Paragraph 7. Thus, it is apparent that Greenes is directed to referencing data organized in a tree-structure, but lacks any teaching or suggestion with respect to at least the recited combination of distinguishing features shown above.

Also, the Examiner has provided an improper conclusory statement, with no articulated reasoning having rational underpinning, how Greenes discloses at least the above noted detailed combination of distinguishing features. While no explicit suggestion in the applied references is necessary to establish prima facie obviousness, the Examiner still has a burden of explaining why a person of ordinary skill in the art would have been prompted to modify the applied references to arrive at the claims. *See, e.g., KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) ("[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness..." (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added))). For example, rather than meet this burden established by *KSR*, with respect to at least the above noted distinguishing features recited in claim 13, the Examiner conclusorily states:

It would have been obvious to one of ordinary skill in the art to add the features of NPL into Ross/Pories. One of ordinary skill in the art would have added these features to Ross/Pories with the motivation to provide a more efficient and effective invention for formatting, manipulating & managing patient and/or medical terminology. (see at least NPL)

(Office Action, page 5).

Further, it appears the Examiner is relying on improper speculation of what the references may be teaching in the conclusory statements, or improper hindsight. In an exemplary post-KSR BPAI decision, *Ex Parte Kamran Ahmed*, Appeal 2007-2765, App.

09/526,442, Decided Feb. 11, 2008 at page 6, the Board opined “Further, a rejection based on section 103 must rest upon a factual basis rather than conjecture, or speculation. ‘Where the legal conclusion [of obviousness] is not supported by the facts it cannot stand.’ (quoting *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967)). See also *In re Kahn*, 441 F.3d at 988.” Also, on page 10 of *Ex Parte Ahmed*, the Board held the Examiner relied on improper speculation, and reversed the obviousness rejection. Finally, the Supreme Court also confirmed that, “[a] fact finder should be aware, of course, of the distinction caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742 (2007).

Therefore, as Greenes cannot be used to cure the stated deficiencies of Ross and Pories, the applied references cannot be used to establish a prima facie case of obviousness for at least the above noted distinguishing features.

Accordingly, claims 13, 24, 28 and 29, and their respective dependent claims, are patentable over the applied references. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection, and allow these claims.

2. A Person Having Ordinary Skill In The Art (PHOSITA) Would Not Have Combined The Applied References

Greenes explicitly states its disclosure is directed to an expert. Thus, the Examiner’s conclusory statements and rationale cannot properly show that a person having *ordinary skill in the art* (PHOSITA) at the time of the invention would have been motivated to combine Greenes with the other applied references to meet at least the above noted distinguishing features.

For example, Greenes states:

"In our experience, complex data base management problems are *not amenable to solution by the unsophisticated user*. A powerful procedural language is necessary for the specification of some of the complex manipulations which need to be performed; MUMPS permits these manipulations while at the same time permitting specially tailored front-end dialogues to be constructed which permit *subject matter experts* to provide data to the system or to control its operation within limited spheres of application.

In this way, the system can be tailored to the needs of specific users and applications, while the central data management facility is available to the *experienced programmer*."

Thus, as noted above, the authors of Greenes contemplated the use of the disclosed teachings of Greenes to be understood and used by a subject matter expert and an experienced programmer and *not* an unsophisticated user or a PHOSITA. Therefore, as substantiated by the disclosure in Greenes, a PHOSITA would not have thought to use the information in Greenes to cure the deficiencies of the other applied references.

Accordingly, the Examiner's conclusory statements does not provide a proper rationale to showing that a PHOSITA at the time of the invention would have been motivated to combine Greenes with the other applied references to meet at least the above noted distinguishing features. Therefore, as Greenes cannot be used to cure the stated deficiencies of Ross and Pories, the applied references cannot be used to establish a prima facie case of obviousness for at least the above noted distinguishing features.

Thus, claims 13, 24, 28 and 29, and their respective dependent claims, are patentable over the applied references. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection, and allow these claims.

New Dependent Claims 30-33

Claims 30-33 recite features that distinguish over the applied references. For example, claim 30 recites "retrieving a concept that is similar or broader to the patient

language cardinal language symptom when the patient-language cardinal symptom does not exactly match the imparted concept identifier of the standard code.”

Claims 31-33 recite similar distinguishing features. Applicant respectfully asserts that the applied references do not teach or suggest these distinguishing features either alone or in combination. Furthermore, claims 30, 31, 32 and 33 depend from independent claims 13, 24, 28 and 29 respectively, and should be found allowable at least based on their respective dependencies.

Accordingly, claims 30-33, are patentable over the applied references. Therefore, Applicant respectfully requests that the Examiner allow these claims.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,
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